

**Committee to Study Compliance with Maine's
Freedom of Access laws**

Summary of December 10 Meeting

Room 438 State House
Augusta, Maine

Members attending:

Senator Peggy Rotundo, chair
Representative Ted Koffman, chair
Robert Schwartz
Todd Brackett
Richard Flewelling
Mal Leary
Steve McCausland

Jeff Pidot
Judy Meyer
Fred Bever
Jess Knox
Harry Pringle
Jeff Ham
Esther Clenott

The chairs called the meeting to order. After introductions, the committee reviewed the agenda. The first item on the agenda included presentations from Maine Municipal Association (MMA), Maine School Management Association (MSMA), and Maine Chiefs of Police Association (MCOPA) on what their organizations are doing to provide training and education for their constituents on compliance with freedom of access issues.

The first presentation was from Richard Flewelling from MMA. He noted that MMA's 6 attorneys field numerous questions every year on freedom of access compliance. They receive more requests for assistance on this issue than any other. He stated that the majority of freedom of information requests are handled by the town clerk. Mr. Flewelling presented a number of educational materials including a list of workshops, a manual for municipalities (It includes a 20 page section on "right to know"), and brochures. He stated that MMA has been providing information on this issue to municipalities since the 1970s.

In response committee members' questions, Mr. Flewelling noted that the clerk is the individual that most frequently interfaces with the public and is usually the one who receives training on freedom of access compliance. He added that there are no barriers to municipalities getting this information – this information is also available on the web and on CD-Rom. Mr. Flewelling further noted that most towns do not have written policies in place – this is thought to impede compliance efforts by adding a layer of bureaucracy.

The second presentation was from Harry Pringle of MSMA. Mr. Pringle stated that they focus training on their fall conference. He provided a handout on 2 MSMA presentations on FOA issues. He noted that many issues are simple, however, others are more complicated. For example, there may be competing requirements on a request -- complying

with one law may result on violating another. Their trainings also deal with these more difficult issues and help members with how to “triage” these requests. MSMA intends to focus some of its training on receptionists who often field these requests. Mr. Pringle added that MSMA has a sample policy that basically restates the law. They plan to revise this policy and use MCOPA’s policy as a model.

When presenters were asked about how they deal with the issue of response timeliness, it prompted a committee discussion on how long public officials have to respond to a request. While the law does not require public officials to deal with it immediately, they should also not construe the 5-day limit on issuing a denial for a request as a giving them 5 days to fulfill a request. There is also the misconception that requests need to be fulfilled immediately – this is untrue. Problems arise when questions are overly broad or vague, and may take significant time to research. It was suggested that how much time officials have to respond to requests should be clarified in the current law.

The third presentation was from Bob Schwarz representing the MCOPA. Mr. Schwarz stated their priority is to assist law enforcement agencies in handling information requests. They first developed a model policy for handling requests in 1999. This policy was recently revised. Mr. Schwarz stated that the majority of agencies implement this model policy, however, they are not required to. Trainings on freedom of access compliance have been held in 5 areas of the state. Mr. Schwarz clarified that during the open records audit last year, the agencies did not intend to withhold information. He stated that dispatchers are the wrong person to ask since they must be available to deal with emergencies. Secondly, the purpose of many questions by agency staff that were directed to information requestor was intended to help clarify what information was being requested.

The committee discussed the different nature of requests. The distinction was made between allowing access to information and requiring the compilation of information. A similar distinction was drawn between timing consuming requests and using information requests as a means of harassment. A number of committee members attested to the existence of requests that are intended to harass public officials or gain leverage with them. It was noted that the law does not require officials to create or compile new sources of information. In addition, the time for collecting this information is not factored into the costs. The suggestion was made to require a deposit upfront for large requests. The committee debated the merits of a requiring a deposit and what the criteria would be for when a deposit should be required. The question of whether there should be fee waivers was also discussed. The committee also discussed whether it made sense to categorize requests according to how difficult they are to retrieve – one suggestion was to use the term “readily available”. . . There was some concern about how this would interpreted by officials

Staff presented a handout to the committee on what other access fees are set in the state. The chart showed widely varying fees depending on the information requested. Staff also provided a handout and presented information on what other states have established for a fee structures.

Committee members then discussed what price should be set for photocopying and how or whether to factor in the staff time required to fulfill the request. The committee generally agreed that it made sense to apply a uniform rate throughout the state. The merits of setting

the price according to the market rate as established by the private sector (e.g. 10 cents per copy) were debated. It was acknowledged that many agencies use the funds collected through information requests as a source of revenue. If agencies are required to charge the market rate, this would likely result in a fiscal note for many agencies. However, it was noted that \$4 per page is excessive. In addition, there was discussion about setting a threshold for when a public entity may start charging for staff time (e.g. after 1 or 2 hours).

The distinction was also made between requests made for commercial purposes and those made to inform the public, and if there should be different fee structures based on whether the request is for commercial purposes or not. It was suggested that it might be helpful to have data on average and typical size requests in order to get a better handle on the expected revenue from different fee structures. One approach might be to increase the fee as the size of the request grows. While no consensus emerged on this issue, the committee generally agreed that consistency and simplicity were important factors in setting a fee structure.

Rep. Koffman suggested that staff develop a “straw man” proposal that would include a number of options for setting fees. The criteria for this proposal should include simplicity, not excessively costly for access, how time should be allowed for a response, a possible distinction between commercial and public purposes, charge per page, how staff time should be factored in and possible waivers. It was also suggested that it would be helpful to have data on how many requests are made of towns/agencies and how much revenue is brought. Committee members acknowledged that this data does not exist. A pilot study may be a helpful tool to figure this out.

Sen. Rotundo raised a concern about court fees, which seem to be excessively high. Deeds were also mentioned as being fairly costly. It was noted that there are no public hearings regarding changes in court fees; they are simply imposed. Sen. Rotundo suggested that the committee invite someone to discuss how these fees are set. Additional concerns were raised regarding SBI fees.

It was decided that the committee will address attorneys’ fees and penalties at the meeting next week (Wednesday, 12/17). The committee will also discuss recommendations from the subcommittee that worked on exemptions to FOA laws, as well as open meetings. It will also continue the discussion on how to improve public understanding of FOA and what resources are or should be available for citizens. Because of the committee’s considerable work load for next week, the decision was made to meet at noon and go until 5 pm if necessary. It was noted by staff that the committee could request a deadline extension if it feels as though additional time is needed to complete its work.

The meeting was adjourned.